DANIEL D. KOBY
AMERICAN RESOURCES USA, INC.

IBLA 94-513 Decided May 2, 1997

Appeals from decisions of the Arizona State Office, Bureau of Land Management, declaring mining claims void. AMC 11606 et al.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   If a mining claimant fails to pay the rental fees required by the Act of Oct. 5, 1992, or file separate certificates of exemption on or before Aug. 31, 1993, the claims are properly deemed abandoned and void.

2. Mining Claims: Abandonment--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   A mining claimant who files a satisfactory certification of exemption from payment of rental fees is required to file in the proper BLM office evidence of assessment work performed within the time period prescribed in the Act of Oct. 5, 1992, and failure to do so results in a conclusive presumption of abandonment of the mining claim.

3. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

   A claimant who had performed his assessment work after Sept. 1, 1992, but before the enactment of the Act of Oct. 5, 1992, is not exempt from paying the rental fee for the assessment year beginning on Sept. 1, 1992, required by that Act.

4. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

5. Constitutional Law: Generally--Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

The conclusive presumption of abandonment for failure to pay the $100 per claim annual fee does not result in an unconstitutional taking of private property in violation of the Fifth Amendment.

6. Environmental Policy Act--Environmental Quality: Environmental Statements--Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--National Environmental Policy Act of 1969: Environmental Statements

Implementation of the provisions of the Act of Oct. 5, 1992, requiring payment of a claim rental fee and providing for the forfeiture of claims, is nondiscretionary and therefore not subject to the requirement of an environmental impact statement.

APPEARANCES: Daniel D. Koby, for himself and for American Resources USA, Inc.

OPINION BY ADMINISTRATIVE JUDGE PRICE

This opinion treats separate appeals from three decisions of the Arizona State Office, Bureau of Land Management (BLM), declaring mining claims abandoned and void. American Resources USA, Inc., (American Resources) has appealed from separate Decisions dated April 19 and 21, 1994, declaring numerous mining claims 1/ abandoned and void for failure to pay rental in the amount of $100 per claim by August 31, 1993, as required by the Department of Interior and Related Agencies Appropriations Act for

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1/ The Apr. 19, 1994, Decision issued to American Resources declared the following claims abandoned and void: AMC 11606 - AMC 11626, AMC 11628 - AMC 11655, AMC 40094, AMC 40096, AMC 40098, AMC 41002, AMC 41004, AMC 41006, AMC 41008, AMC 41028, AMC 41030, AMC 41032, AMC 41033, AMC 41039 - AMC 41041, AMC 41064, AMC 298367 - AMC 298373, AMC 298378 - AMC 298384, AMC 298404 - AMC 298414, and AMC 298420. The Apr. 21, 1994, Decision issued to American Resources declared the following claims abandoned and void: AMC 41000 and AMC 100859 - AMC 100902.

Fiscal Year 1993 (the Appropriations Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), for the assessment years ending at noon on September 1, 1993, and at noon on September 1, 1994. Daniel D. Koby has appealed from a Decision dated April 19, 1994, declaring 10 mining claims abandoned and void for failure to file affidavits of assessment work or notices of intention to hold the claims on or before December 30, 1993, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1994). 2/ The three appeals were docketed as IBLA 94-513. Appellants filed a joint Statement of Reasons (SOR) on June 22, 1994. 3/

Section 314 of FLPMA and Departmental regulation 43 C.F.R. § 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1994); 43 C.F.R. § 3833.4.

[1] The 1993 Appropriations Act imposed an additional requirement that each claimant "pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993," for each unpatented mining claim, mill, or tunnel site to hold such claim for the assessment year ending at noon on September 1, 1993. (Emphasis added.) The Appropriations Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, and requiring payment of an additional $100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The only exemption provided from this rental fee requirement is the so-called "small miner exemption" available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 C.F.R. § 3833.1-6(a) (1993). Washburn Mining Co., 133 IBLA 294, 296 (1995). The regulations require that a claimant applying for the small

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2/ A BLM Decision dated Apr. 19, 1994, was issued to Daniel D. Koby declaring the following mining claims abandoned and void: AMC 41014, AMC 41015, AMC 41016, AMC 41018, AMC 41020, AMC 41022 AMC 41024, AMC 41026, AMC 41034, and AMC 41036.

3/ By Order dated July 18, 1994, this Board directed Koby to show cause why the appeal of American Resources should not be dismissed because the appeal submissions failed to disclose the relationship between Koby and American Resources, raising the issue of whether Koby was authorized under 43 C.F.R. § 1.3(b)(3) to practice before the Board on behalf of American Resources. On Sept. 1, 1994, in a supplemental SOR, Koby identified himself as President of American Resources, which permits him to represent the organization before the Board.

miner exemption shall file separate certificates of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year. 43 C.F.R. § 3833.1-7(d) (1993).

The Appropriations Act also affected a claimant's assessment work and filing obligations under section 314 of FLPMA. It provided that those claimants who qualify for the small miner exemption for the 1993 fiscal year may elect to either pay the claim rental for the assessment year ending at noon on September 1, 1993, or do the assessment work required by the Mining Law of 1872, 30 U.S.C. §§ 28-28e (1994), and meet the filing requirements of section 314(a) of FLPMA. Lee Jesse Peterson, 133 IBLA 381, 383 (1995).

American Resources owned numerous claims at one point, but executed quit claim deeds to various individuals, including Daniel D. Koby in his personal capacity, each of which listed 10 claims, and these individuals filed certificates of exemption for those claims by August 31, 1993. These individuals, however, failed to file their affidavits of assessment work on or before December 30, 1993, as required by section 314 of FLPMA, and BLM issued decisions declaring those claims abandoned and void. Only Koby filed an appeal.

[2] Koby's arguments on behalf of himself and American Resources are directed at the requirements of the Appropriations Act. However, Koby filed the certificate of exemption for his 10 claims for both assessment years, and thus BLM did not declare his claims abandoned and void for failure to comply with the Appropriations Act. The BLM's Decision was based on Koby's failure to file affidavits of assessment work or notices of intention to hold the claims on or before December 30, 1993, as required by section 314 of FLPMA. As we held in Peterson, supra, a mining claimant who files a satisfactory certification of exemption from payment of rental fees is also required to file in the proper BLM office evidence of assessment work performed within the time period prescribed in Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), and failure to do so results in a conclusive presumption of abandonment of the mining claim. See 43 U.S.C. § 1744(c) (1994); 43 C.F.R. § 3833.4. In United States v. Locke, 471 U.S. 84 (1985), the Supreme Court found section 314 of FLPMA to be constitutional and held that a claim for which timely filings are not made is extinguished by operation of law, notwithstanding the claimant's intent to hold the claim.

Although American Resources had conveyed many of its claims to others, it still retained more than 10 claims and was therefore ineligible for the small miner exemption. Thus, the Appropriations Act required American Resources to pay on or before August 31, 1993, $100 for each claim for each of the 2 assessment years identified in the Appropriations Act. American Resources failed to do so, and BLM issued the two Decisions declaring its claims abandoned and void.

Appellants have raised several arguments concerning the rental fee legislation and the regulations that implement it. Appellants recognize that BLM's regulations mandate payment by claimants who have already performed the assessment work during that period. 43 C.F.R. § 3833.1-5 (1993). They note, however, that the Appropriations Act refers to the assessment years beginning in September 1, 1992, and September 1, 1993, and contend that the Appropriations Act is ambiguous concerning rental fee requirements for "claimants who completed their assessment work between September 1, 1992, [and October 4, 1992] for the assessment year beginning September 1, 1992." (SOR at 1.)

The regulation admittedly may place claimants who had performed their annual assessment work after September 1, 1992, but before the enactment of the statute on October 5, at a disadvantage. Certainly claimants who had not performed their assessment work at the value of $100 per claim during that time would not have been required to perform that work if they paid the $100 per claim rental. In contrast, claimants who were ineligible for the small miner exemption and who had performed $100 worth of assessment work between September 1 and October 4, nevertheless were required to pay the $100 per claim rental for that year.

[3] In Keith Lindsey, 130 IBLA 346, 348 (1994), we noted that in proposing its regulations, BLM considered the possibility that some mining claimants had performed assessment work prior to passage of the legislation and asked for comments on an alternative proposal that would allow such claimants to certify that they had completed assessment work between September 1, 1992, and October 5, 1992. 58 Fed. Reg. 12878, 12879 (Mar. 5, 1993). That option was not adopted. 58 Fed. Reg. 38190, 38191 (July 15, 1993). Thus, apart from the small miner exemption, no other exemptions were specified or implied. Id.; see also George Jaslowski, 137 IBLA 354, 357 (1997); Idaho Mining & Development Co., 132 IBLA 29, 33 (1995); William B. Wray, 129 IBLA 173, 176 (1994).

[4] Appellants assert that they did not receive adequate notice of the implementation of the Appropriations Act. The fact that Appellants did not receive personal notification of the requirements does not provide a basis for reversing BLM's Decision. All persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lester W. Pullen, 131 IBLA 271 (1994); Thomas L. Sawyer, 114 IBLA 135, 139 (1990); Magness Petroleum Corp., 113 IBLA 214, 217 (1990). The BLM therefore had no obligation to provide Appellants any particular notice of the changes in the law. See David and Roirdon Doremus, 61 IBLA 367, 368 (1982).

Appellants also argue that the Appropriations Act deprives them of a "vested private property right" and of the value of their prior assessment work and improvements on the claims, and that BLM's regulations "work an impermissible intrusion on [their] constitutionally protected property rights * * * without due process of law in violation of the Fifth Amendment of the United States Constitution." (SOR at 2.) Appellants attack

the reasonableness of the fee requirement contending that the effect of the Appropriations Act and regulations increases their $1,130 annual filing fee to $45,200 "on very short notice." We note, however, that the size of the fee is no more than the value of the assessment work that payment of the fee would replace. The size of American Resources' fee thus is solely attributable to the large number of claims it held. In their supplemental SOR, Appellants refer to the Fourteenth Amendment to the Constitution and argue that the Appropriations Act has deprived women and children of their constitutional rights without due process by combining their claims for purposes of the 10-claim limit as 43 C.F.R. § 3833.1-6(a)(2) (1993) provides.

[5] We have often observed that the Board is not an appropriate forum to consider the constitutionality of Federal legislation, see Idaho Mining & Development Co., supra; Amerada Hess Corp., 128 IBLA 94, 98 (1993), but note nonetheless that a constitutional challenge to the imposition of rental fees was rejected by the United States Court of Appeals for the Federal Circuit in Kunkes v. United States, 78 F.3d 1549, cert. denied, 117 S.Ct. 74 (1996). Citing the Supreme Court's decision in Locke, supra, the Federal Circuit acknowledged that unpatented mining claims are a "unique form of property," but found that "claimholders take their claims with the knowledge that the Government, as owner of the underlying fee title, maintains broad regulatory powers over the use of the public lands on which unpatented mining claims are located." Kunkes, supra, at 1553. The court did not consider this increase unreasonable, even though that case involved claimholders whose annual fees for 573 claims would have exceeded their annual personal income $35,000. Id. at 1552. The court further held:

> It is entirely reasonable for Congress to require a $100 per claim fee in order to assess whether the claim holders believe that the value of the minerals in their claims is sufficiently great to warrant such a payment; and whether claim holders have the resources and desire to develop these claims. If the claims are not valued by the claim holders sufficiently to warrant a $100 fee payment, then the claim holders' decision not to pay the fee eliminates an unnecessary encumbrance on public lands and frees the land for a more valued use.

Id. at 1556.

Lastly, Appellants allege that BLM failed to comply with section 102(2)(C) the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4332(C) (1994), in that BLM did not prepare an environmental impact statement (EIS) "outlining the environmental impact that the 'Final Rule' will have" on claimholders. The NEPA requires preparation of an EIS for "major Federal actions significantly affecting the quality of the human environment." Id. In promulgating the rule, BLM expressly determined that the rule "does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed

statement * * * is required." 58 Fed. Reg. 38195 (July 15, 1993). Appellants have not identified any particular environmental impact of the rule, significant or otherwise, that would cast BLM's determination in doubt. However, invalidation of a mining claim is not a "major Federal action" under NEPA. United States v. Diven, 32 IBLA 361 (1977).

Moreover, the requirement of the fee and the conclusive presumption of abandonment for failure to pay it are imposed by the statute itself, and BLM's regulations simply mirror those features of the statute. The statutory provision is self-executing, and even where extenuating circumstances are asserted, the Department is without authority to excuse lack of compliance with the rental fee requirement of the Appropriations Act, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). The mandatory nature of the mining claim rental legislation precluded the Department from suspending its effectiveness to study its environmental effects. See Flint Ridge Development Co. v. Scenic Rivers Association, 426 U.S. 776, 788, 791, reh'g denied, 429 U.S. 875 (1976).

[6] We have held that an EIS is not required prior to a nondiscretionary Federal action such as the issuance of a mineral patent. United States v. Pittsburgh Pacific Co., 30 IBLA 388, 84 Interior Dec. 282, aff'd sub nom. State of South Dakota v. Andrus, 462 F. Supp. 905 (D. S.D. 1978), aff'd, 614 F.2d 1190 (8th Cir.), cert denied, 449 U.S. 822 (1980). As implementation of the requirements of the Appropriations Act is nondiscretionary, it is not subject to the requirement to prepare an EIS.

To the extent Appellants have raised arguments not specifically addressed herein, they have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decisions appealed from are affirmed.

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T. Britt Price
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge